

110TH CONGRESS
1ST SESSION

S. 459

To require that health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, and lymph node dissection for the treatment of breast cancer and coverage for secondary consultations.

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2007

Ms. SNOWE (for herself, Ms. LANDRIEU, Mr. COCHRAN, Mrs. MURRAY, Mr. LAUTENBERG, Mr. DURBIN, Mrs. CLINTON, Mr. SANDERS, Mrs. FEINSTEIN, Mrs. BOXER, Ms. CANTWELL, Ms. MIKULSKI, Mr. HARKIN, Mr. SCHUMER, and Mr. MENENDEZ) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To require that health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, and lymph node dissection for the treatment of breast cancer and coverage for secondary consultations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Breast Cancer Patient
5 Protection Act of 2007”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the offering and operation of health plans
4 affect commerce among the States;

5 (2) health care providers located in a State
6 serve patients who reside in the State and patients
7 who reside in other States;

8 (3) in order to provide for uniform treatment of
9 health care providers and patients among the States,
10 it is necessary to cover health plans operating in 1
11 State as well as health plans operating among the
12 several States;

13 (4) currently, 20 States mandate minimum hos-
14 pital stay coverage after a patient undergoes a mas-
15 tectomy;

16 (5) according to the American Cancer Society,
17 there were 40,954 deaths due to breast cancer in
18 2004;

19 (6) according to the American Cancer Society,
20 there are currently over 2.0 million women living in
21 the United States who have been treated for breast
22 cancer; and

23 (7) according to the American Cancer Society,
24 a woman in the United States has a 1 in 8 chance
25 of developing invasive breast cancer in her lifetime.

1 **SEC. 3. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**
 2 **COME SECURITY ACT OF 1974.**

3 (a) IN GENERAL.—Subpart B of part 7 of subtitle
 4 B of title I of the Employee Retirement Income Security
 5 Act of 1974 (29 U.S.C. 1185 et seq.) is amended by add-
 6 ing at the end the following:

7 **“SEC. 714. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 8 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
 9 **AND LYMPH NODE DISSECTIONS FOR THE**
 10 **TREATMENT OF BREAST CANCER AND COV-**
 11 **ERAGE FOR SECONDARY CONSULTATIONS.**

12 “(a) INPATIENT CARE.—

13 “(1) IN GENERAL.—A group health plan, and a
 14 health insurance issuer providing health insurance
 15 coverage in connection with a group health plan,
 16 that provides medical and surgical benefits shall en-
 17 sure that inpatient (and in the case of a
 18 lumpectomy, outpatient) coverage and radiation
 19 therapy is provided for breast cancer treatment.
 20 Such plan or coverage may not—

21 “(A) except as provided for in paragraph

22 (2)—

23 “(i) restrict benefits for any hospital
 24 length of stay in connection with a mastec-
 25 tomy or breast conserving surgery (such as

1 a lumpectomy) for the treatment of breast
 2 cancer to less than 48 hours; or

3 “(ii) restrict benefits for any hospital
 4 length of stay in connection with a lymph
 5 node dissection for the treatment of breast
 6 cancer to less than 24 hours; or

7 “(B) require that a provider obtain author-
 8 ization from the plan or the issuer for pre-
 9 scribing any length of stay required under sub-
 10 paragraph (A) (without regard to paragraph
 11 (2)).

12 “(2) EXCEPTION.—Nothing in this section shall
 13 be construed as requiring the provision of inpatient
 14 coverage if the attending physician and patient de-
 15 termine that either a shorter period of hospital stay,
 16 or outpatient treatment, is medically appropriate.

17 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—
 18 In implementing the requirements of this section, a group
 19 health plan, and a health insurance issuer providing health
 20 insurance coverage in connection with a group health plan,
 21 may not modify the terms and conditions of coverage
 22 based on the determination by a participant or beneficiary
 23 to request less than the minimum coverage required under
 24 subsection (a).

1 “(c) NOTICE.—A group health plan, and a health in-
 2 surance issuer providing health insurance coverage in con-
 3 nection with a group health plan shall provide notice to
 4 each participant and beneficiary under such plan regard-
 5 ing the coverage required by this section in accordance
 6 with regulations promulgated by the Secretary. Such no-
 7 tice shall be in writing and prominently positioned in any
 8 literature or correspondence made available or distributed
 9 by the plan or issuer and shall be transmitted—

10 “(1) in the next mailing made by the plan or
 11 issuer to the participant or beneficiary; or

12 “(2) as part of any yearly informational packet
 13 sent to the participant or beneficiary;
 14 whichever is earlier.

15 “(d) SECONDARY CONSULTATIONS.—

16 “(1) IN GENERAL.—A group health plan, and a
 17 health insurance issuer providing health insurance
 18 coverage in connection with a group health plan,
 19 that provides coverage with respect to medical and
 20 surgical services provided in relation to the diagnosis
 21 and treatment of cancer shall ensure that full cov-
 22 erage is provided for secondary consultations by spe-
 23 cialists in the appropriate medical fields (including
 24 pathology, radiology, and oncology) to confirm or re-
 25 fute such diagnosis. Such plan or issuer shall ensure

1 that full coverage is provided for such secondary
2 consultation whether such consultation is based on a
3 positive or negative initial diagnosis. In any case in
4 which the attending physician certifies in writing
5 that services necessary for such a secondary con-
6 sultation are not sufficiently available from special-
7 ists operating under the plan with respect to whose
8 services coverage is otherwise provided under such
9 plan or by such issuer, such plan or issuer shall en-
10 sure that coverage is provided with respect to the
11 services necessary for the secondary consultation
12 with any other specialist selected by the attending
13 physician for such purpose at no additional cost to
14 the individual beyond that which the individual
15 would have paid if the specialist was participating in
16 the network of the plan.

17 “(2) EXCEPTION.—Nothing in paragraph (1)
18 shall be construed as requiring the provision of sec-
19 ondary consultations where the patient determines
20 not to seek such a consultation.

21 “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—
22 A group health plan, and a health insurance issuer pro-
23 viding health insurance coverage in connection with a
24 group health plan, may not—

1 “(1) penalize or otherwise reduce or limit the
2 reimbursement of a provider or specialist because
3 the provider or specialist provided care to a partici-
4 pant or beneficiary in accordance with this section;

5 “(2) provide financial or other incentives to a
6 physician or specialist to induce the physician or
7 specialist to keep the length of inpatient stays of pa-
8 tients following a mastectomy, lumpectomy, or a
9 lymph node dissection for the treatment of breast
10 cancer below certain limits or to limit referrals for
11 secondary consultations;

12 “(3) provide financial or other incentives to a
13 physician or specialist to induce the physician or
14 specialist to refrain from referring a participant or
15 beneficiary for a secondary consultation that would
16 otherwise be covered by the plan or coverage in-
17 volved under subsection (d); or

18 “(4) deny to a woman eligibility, or continued
19 eligibility, to enroll or to renew coverage under the
20 terms of the plan or coverage solely for the purpose
21 of avoiding the requirements of this section.”.

22 (b) CLERICAL AMENDMENT.—The table of contents
23 in section 1 of the Employee Retirement Income Security
24 Act of 1974 is amended by inserting after the item relat-
25 ing to section 713 the following:

“Sec. 714. Required coverage for minimum hospital stay for mastectomies, lumpectomies, and lymph node dissections for the treatment of breast cancer and coverage for secondary consultations.”.

1 (c) EFFECTIVE DATES.—

2 (1) IN GENERAL.—The amendments made by
3 this section shall apply with respect to plan years be-
4 ginning on or after the date that is 90 days after
5 the date of enactment of this Act.

6 (2) SPECIAL RULE FOR COLLECTIVE BAR-
7 GAINING AGREEMENTS.—In the case of a group
8 health plan maintained pursuant to 1 or more collec-
9 tive bargaining agreements between employee rep-
10 resentatives and 1 or more employers ratified before
11 the date of enactment of this Act, the amendments
12 made by this section shall not apply to plan years
13 beginning before the date on which the last collective
14 bargaining agreements relating to the plan termi-
15 nates (determined without regard to any extension
16 thereof agreed to after the date of enactment of this
17 Act). For purposes of this paragraph, any plan
18 amendment made pursuant to a collective bargaining
19 agreement relating to the plan which amends the
20 plan solely to conform to any requirement added by
21 this section shall not be treated as a termination of
22 such collective bargaining agreement.

1 **SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**
 2 **ACT RELATING TO THE GROUP MARKET.**

3 (a) IN GENERAL.—Subpart 2 of part A of title
 4 XXVII of the Public Health Service Act (42 U.S.C.
 5 300gg–4 et seq.) is amended by adding at the end the
 6 following:

7 **“SEC. 2707. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 8 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
 9 **AND LYMPH NODE DISSECTIONS FOR THE**
 10 **TREATMENT OF BREAST CANCER AND COV-**
 11 **ERAGE FOR SECONDARY CONSULTATIONS.**

12 “(a) INPATIENT CARE.—

13 “(1) IN GENERAL.—A group health plan, and a
 14 health insurance issuer providing health insurance
 15 coverage in connection with a group health plan,
 16 that provides medical and surgical benefits shall en-
 17 sure that inpatient (and in the case of a
 18 lumpectomy, outpatient) coverage and radiation
 19 therapy is provided for breast cancer treatment.
 20 Such plan or coverage may not—

21 “(A) except as provided for in paragraph

22 (2)—

23 “(i) restrict benefits for any hospital
 24 length of stay in connection with a mastec-
 25 tomy or breast conserving surgery (such as

1 a lumpectomy) for the treatment of breast
 2 cancer to less than 48 hours; or

3 “(ii) restrict benefits for any hospital
 4 length of stay in connection with a lymph
 5 node dissection for the treatment of breast
 6 cancer to less than 24 hours; or

7 “(B) require that a provider obtain author-
 8 ization from the plan or the issuer for pre-
 9 scribing any length of stay required under sub-
 10 paragraph (A) (without regard to paragraph
 11 (2)).

12 “(2) EXCEPTION.—Nothing in this section shall
 13 be construed as requiring the provision of inpatient
 14 coverage if the attending physician and patient de-
 15 termine that either a shorter period of hospital stay,
 16 or outpatient treatment, is medically appropriate.

17 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—
 18 In implementing the requirements of this section, a group
 19 health plan, and a health insurance issuer providing health
 20 insurance coverage in connection with a group health plan,
 21 may not modify the terms and conditions of coverage
 22 based on the determination by a participant or beneficiary
 23 to request less than the minimum coverage required under
 24 subsection (a).

1 “(c) NOTICE.—A group health plan, and a health in-
2 surance issuer providing health insurance coverage in con-
3 nection with a group health plan shall provide notice to
4 each participant and beneficiary under such plan regard-
5 ing the coverage required by this section in accordance
6 with regulations promulgated by the Secretary. Such no-
7 tice shall be in writing and prominently positioned in any
8 literature or correspondence made available or distributed
9 by the plan or issuer and shall be transmitted—

10 “(1) in the next mailing made by the plan or
11 issuer to the participant or beneficiary; or

12 “(2) as part of any yearly informational packet
13 sent to the participant or beneficiary;
14 whichever is earlier.

15 “(d) SECONDARY CONSULTATIONS.—

16 “(1) IN GENERAL.—A group health plan, and a
17 health insurance issuer providing health insurance
18 coverage in connection with a group health plan that
19 provides coverage with respect to medical and sur-
20 gical services provided in relation to the diagnosis
21 and treatment of cancer shall ensure that full cov-
22 erage is provided for secondary consultations by spe-
23 cialists in the appropriate medical fields (including
24 pathology, radiology, and oncology) to confirm or re-
25 fute such diagnosis. Such plan or issuer shall ensure

1 that full coverage is provided for such secondary
2 consultation whether such consultation is based on a
3 positive or negative initial diagnosis. In any case in
4 which the attending physician certifies in writing
5 that services necessary for such a secondary con-
6 sultation are not sufficiently available from special-
7 ists operating under the plan with respect to whose
8 services coverage is otherwise provided under such
9 plan or by such issuer, such plan or issuer shall en-
10 sure that coverage is provided with respect to the
11 services necessary for the secondary consultation
12 with any other specialist selected by the attending
13 physician for such purpose at no additional cost to
14 the individual beyond that which the individual
15 would have paid if the specialist was participating in
16 the network of the plan.

17 “(2) EXCEPTION.—Nothing in paragraph (1)
18 shall be construed as requiring the provision of sec-
19 ondary consultations where the patient determines
20 not to seek such a consultation.

21 “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—
22 A group health plan, and a health insurance issuer pro-
23 viding health insurance coverage in connection with a
24 group health plan, may not—

1 “(1) penalize or otherwise reduce or limit the
2 reimbursement of a provider or specialist because
3 the provider or specialist provided care to a partici-
4 pant or beneficiary in accordance with this section;

5 “(2) provide financial or other incentives to a
6 physician or specialist to induce the physician or
7 specialist to keep the length of inpatient stays of pa-
8 tients following a mastectomy, lumpectomy, or a
9 lymph node dissection for the treatment of breast
10 cancer below certain limits or to limit referrals for
11 secondary consultations;

12 “(3) provide financial or other incentives to a
13 physician or specialist to induce the physician or
14 specialist to refrain from referring a participant or
15 beneficiary for a secondary consultation that would
16 otherwise be covered by the plan or coverage in-
17 volved under subsection (d); or

18 “(4) deny to a woman eligibility, or continued
19 eligibility, to enroll or to renew coverage under the
20 terms of the plan or coverage solely for the purpose
21 of avoiding the requirements of this section.”.

22 (b) EFFECTIVE DATES.—

23 (1) IN GENERAL.—The amendments made by
24 this section shall apply to group health plans for

1 plan years beginning on or after 90 days after the
 2 date of enactment of this Act.

3 (2) SPECIAL RULE FOR COLLECTIVE BAR-
 4 GAINING AGREEMENTS.—In the case of a group
 5 health plan maintained pursuant to 1 or more collec-
 6 tive bargaining agreements between employee rep-
 7 resentatives and 1 or more employers ratified before
 8 the date of enactment of this Act, the amendments
 9 made by this section shall not apply to plan years
 10 beginning before the date on which the last collective
 11 bargaining agreements relating to the plan termi-
 12 nates (determined without regard to any extension
 13 thereof agreed to after the date of enactment of this
 14 Act). For purposes of this paragraph, any plan
 15 amendment made pursuant to a collective bargaining
 16 agreement relating to the plan which amends the
 17 plan solely to conform to any requirement added by
 18 this section shall not be treated as a termination of
 19 such collective bargaining agreement.

20 **SEC. 5. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**
 21 **RELATING TO THE INDIVIDUAL MARKET.**

22 (a) IN GENERAL.—The first subpart 3 of part B of
 23 title XXVII of the Public Health Service Act (42 U.S.C.
 24 300gg–11 et seq.) is amended—

25 (1) by adding after section 2752 the following:

1 **“SEC. 2753. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 2 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
 3 **AND LYMPH NODE DISSECTIONS FOR THE**
 4 **TREATMENT OF BREAST CANCER AND SEC-**
 5 **ONDARY CONSULTATIONS.**

6 “The provisions of section 2707 shall apply to health
 7 insurance coverage offered by a health insurance issuer
 8 in the individual market in the same manner as they apply
 9 to health insurance coverage offered by a health insurance
 10 issuer in connection with a group health plan in the small
 11 or large group market.”; and

12 (2) by redesignating such subpart 3 as subpart
 13 2.

14 (b) **EFFECTIVE DATE.**—The amendment made by
 15 this section shall apply with respect to health insurance
 16 coverage offered, sold, issued, renewed, in effect, or oper-
 17 ated in the individual market on or after the date of enact-
 18 ment of this Act.

19 **SEC. 6. AMENDMENTS TO THE INTERNAL REVENUE CODE**
 20 **OF 1986.**

21 (a) **IN GENERAL.**—Subchapter B of chapter 100 of
 22 the Internal Revenue Code of 1986 is amended—

23 (1) in the table of sections, by inserting after
 24 the item relating to section 9812 the following:

“Sec. 9813. Required coverage for minimum hospital stay for mastectomies,
 lumpectomies, and lymph node dissections for the treatment of
 breast cancer and coverage for secondary consultations.”; and

1 (2) by inserting after section 9812 the fol-
 2 lowing:

3 **“SEC. 9813. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 4 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
 5 **AND LYMPH NODE DISSECTIONS FOR THE**
 6 **TREATMENT OF BREAST CANCER AND COV-**
 7 **ERAGE FOR SECONDARY CONSULTATIONS.**

8 “(a) INPATIENT CARE.—

9 “(1) IN GENERAL.—A group health plan that
 10 provides medical and surgical benefits shall ensure
 11 that inpatient (and in the case of a lumpectomy,
 12 outpatient) coverage and radiation therapy is pro-
 13 vided for breast cancer treatment. Such plan may
 14 not—

15 “(A) except as provided for in paragraph
 16 (2)—

17 “(i) restrict benefits for any hospital
 18 length of stay in connection with a mastec-
 19 tomy or breast conserving surgery (such as
 20 a lumpectomy) for the treatment of breast
 21 cancer to less than 48 hours; or

22 “(ii) restrict benefits for any hospital
 23 length of stay in connection with a lymph
 24 node dissection for the treatment of breast
 25 cancer to less than 24 hours; or

1 “(B) require that a provider obtain author-
2 ization from the plan for prescribing any length
3 of stay required under subparagraph (A) (with-
4 out regard to paragraph (2)).

5 “(2) EXCEPTION.—Nothing in this section shall
6 be construed as requiring the provision of inpatient
7 coverage if the attending physician and patient de-
8 termine that either a shorter period of hospital stay,
9 or outpatient treatment, is medically appropriate.

10 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—
11 In implementing the requirements of this section, a group
12 health plan may not modify the terms and conditions of
13 coverage based on the determination by a participant or
14 beneficiary to request less than the minimum coverage re-
15 quired under subsection (a).

16 “(c) NOTICE.—A group health plan shall provide no-
17 tice to each participant and beneficiary under such plan
18 regarding the coverage required by this section in accord-
19 ance with regulations promulgated by the Secretary. Such
20 notice shall be in writing and prominently positioned in
21 any literature or correspondence made available or distrib-
22 uted by the plan and shall be transmitted—

23 “(1) in the next mailing made by the plan to
24 the participant or beneficiary; or

1 “(2) as part of any yearly informational packet
2 sent to the participant or beneficiary;
3 whichever is earlier.

4 “(d) SECONDARY CONSULTATIONS.—

5 “(1) IN GENERAL.—A group health plan that
6 provides coverage with respect to medical and sur-
7 gical services provided in relation to the diagnosis
8 and treatment of cancer shall ensure that full cov-
9 erage is provided for secondary consultations by spe-
10 cialists in the appropriate medical fields (including
11 pathology, radiology, and oncology) to confirm or re-
12 fute such diagnosis. Such plan or issuer shall ensure
13 that full coverage is provided for such secondary
14 consultation whether such consultation is based on a
15 positive or negative initial diagnosis. In any case in
16 which the attending physician certifies in writing
17 that services necessary for such a secondary con-
18 sultation are not sufficiently available from special-
19 ists operating under the plan with respect to whose
20 services coverage is otherwise provided under such
21 plan or by such issuer, such plan or issuer shall en-
22 sure that coverage is provided with respect to the
23 services necessary for the secondary consultation
24 with any other specialist selected by the attending
25 physician for such purpose at no additional cost to

1 the individual beyond that which the individual
 2 would have paid if the specialist was participating in
 3 the network of the plan.

4 “(2) EXCEPTION.—Nothing in paragraph (1)
 5 shall be construed as requiring the provision of sec-
 6 ondary consultations where the patient determines
 7 not to seek such a consultation.

8 “(e) PROHIBITION ON PENALTIES.—A group health
 9 plan may not—

10 “(1) penalize or otherwise reduce or limit the
 11 reimbursement of a provider or specialist because
 12 the provider or specialist provided care to a partici-
 13 pant or beneficiary in accordance with this section;

14 “(2) provide financial or other incentives to a
 15 physician or specialist to induce the physician or
 16 specialist to keep the length of inpatient stays of pa-
 17 tients following a mastectomy, lumpectomy, or a
 18 lymph node dissection for the treatment of breast
 19 cancer below certain limits or to limit referrals for
 20 secondary consultations;

21 “(3) provide financial or other incentives to a
 22 physician or specialist to induce the physician or
 23 specialist to refrain from referring a participant or
 24 beneficiary for a secondary consultation that would

1 otherwise be covered by the plan involved under sub-
 2 section (d); or

3 “(4) deny to a woman eligibility, or continued
 4 eligibility, to enroll or to renew coverage under the
 5 terms of the plan solely for the purpose of avoiding
 6 the requirements of this section.”.

7 (b) CLERICAL AMENDMENT.—The table of contents
 8 for chapter 100 of such Code is amended by inserting after
 9 the item relating to section 9812 the following:

“Sec. 9813. Required coverage for minimum hospital stay for mastectomies,
 lumpectomies, and lymph node dissections for the treatment of
 breast cancer and coverage for secondary consultations.”.

10 (c) EFFECTIVE DATES.—

11 (1) IN GENERAL.—The amendments made by
 12 this section shall apply with respect to plan years be-
 13 ginning on or after the date of enactment of this
 14 Act.

15 (2) SPECIAL RULE FOR COLLECTIVE BAR-
 16 GAINING AGREEMENTS.—In the case of a group
 17 health plan maintained pursuant to 1 or more collec-
 18 tive bargaining agreements between employee rep-
 19 resentatives and 1 or more employers ratified before
 20 the date of enactment of this Act, the amendments
 21 made by this section shall not apply to plan years
 22 beginning before the date on which the last collective
 23 bargaining agreements relating to the plan termi-
 24 nates (determined without regard to any extension

1 thereof agreed to after the date of enactment of this
2 Act). For purposes of this paragraph, any plan
3 amendment made pursuant to a collective bargaining
4 agreement relating to the plan which amends the
5 plan solely to conform to any requirement added by
6 this section shall not be treated as a termination of
7 such collective bargaining agreement.

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